

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
BALDWINVILLE PRODUCTS, INC. and)	
ERVING INDUSTRIES, INC.,)	
)	
Defendants.)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting on behalf of and at the request of the Chief of Engineers of the United States Army Corps of Engineers ("Army Corps"), files this Complaint and alleges as follows:

NATURE OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607(a). The United States seeks injunctive relief pursuant to Section 106, 42 U.S.C. § 9606, and the recovery, pursuant to Section 107(a) of CERCLA, 42 U.S.C.

§ 9607(a), of costs that it has incurred in response to the release and/or threatened release of hazardous substances at and from the Birch Hill Dam and Reservoir Project Area, located on the Millers and Otter Rivers in Worcester County, Massachusetts (“the Site”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106, 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516-19.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) because the release or threatened releases of hazardous substances that gave rise to the claims herein occurred in this district and the property that is the subject of this action is located in this district.

THE DEFENDANTS

4. Defendant Baldwinville Products Inc. (“Baldwinville”) is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Defendant Baldwinville owned and operated a paper products mill, the Baldwinville Products Mill (“the Mill”), during a period when polychlorinated biphenyls (“PCBs”) were released from the into the environment.

5. Defendant Erving Industries Inc. (“Erving”) is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Defendant Erving owned Baldwinville during the time that Baldwinville owned and operated the Mill and PCBs were released from the Mill into the environment. Erving also operated the Mill during this time period.

FACTUAL BACKGROUND

6. The Birch Hill Dam ("the Dam") is located on the Millers River in the town of Royalston, Worcester County, Massachusetts. The Dam is owned in fee by the United States and is operated by the Army Corps. The reservoir created by the Dam is located in the towns of Royalston, Winchendon, and Templeton, Worcester County, Massachusetts.

7. The Mill is located on the Otter River, upstream of the Birch Hill Dam. Between 1952 and approximately 1979, the Mill released wastewater containing PCBs directly to the Otter River. The Otter River merges with the Millers River upstream of the Birch Hill Dam.

8. Studies conducted by the Massachusetts Department of Environmental Protection ("MADEP") and the Army Corps found elevated concentrations of PCBs in the sediments, flood plain soils, and fish of the Millers and Otter Rivers.

9. At the request of MADEP, the Army Corps conducted preliminary response actions at the Site, including, but not limited to, the following:

A. As part of Phase I response actions under the Massachusetts Contingency Plan ("MCP"), 310 CMR 40.0400, the Army Corps retained a contractor to prepare a report entitled, "Evaluation of PCB Contamination at Birch Hill Dam, Royalston-Athol, MA, Prepare Release Notification, Tier Classification, and Tier 1A Permit Application;" and

B. As part of Phase II response actions under the MCP, 310 CMR 40.0800, the Army Corps retained a contractor to prepare a report entitled "Site Assessment Report and Risk Characterization of PCBs at Birch Hill Reservoir" (collectively "the Reports").

10. The Army Corps has incurred costs related to the above response actions which constitute response actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C.

§ 9601(25).

11. As a result of the information obtained through the Reports, the Army Corps submitted an application to MADEP pursuant to 310 CMR 40.0180 for Downgradient Property Status ("DPS"). DPS status was granted to the Army Corps by MADEP on February 1, 2002.

CLAIM FOR RELIEF

12. Paragraphs 1 through 11 are realleged and incorporated herein by reference.

13. "PCBs" are a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14. There have been "releases" or threatened "releases" of "hazardous substances" into the "environment" at the Mill, as those terms are defined in Sections 101(8), (14), and (22) of CERCLA, 42 U.S.C. §§ 9601(8), (14), and (22).

15. Hazardous substances, within the meaning of CERCLA Section 101(14), 42 U.S.C. § 9601(14), have been found at the Birch Hill Dam Site.

16. Defendant Baldwinville is an "owner" and/or an "operator" of a "facility" at the time of "disposal" of a hazardous substance, within the meaning of Sections 101(9), (20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9), (20) and 9607(a)(2).

17. Defendant Erving is an "owner" and/or an "operator" of a "facility" at the time of "disposal" of a hazardous substance, within the meaning of Sections 101(9), (20), (29) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9), (20), (29) and 9607(a)(2).

18. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section ...

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, ... shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the national contingency plan

19. The actions taken by the United States in connection with the Birch Hill Dam Site constitute “removal actions” within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

20. The United States has incurred “response costs” as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), for actions taken in response to the release or threatened release at the Site. All of the response actions at the Site are authorized by Section 104 of CERCLA, 42 U.S.C. § 9604.

21. The United States has incurred over \$500,000 in unreimbursed response costs at the Site. The costs incurred by the United States in connection with the Birch Hill Dam Site were incurred in a manner not inconsistent with the National Contingency Plan (“NCP”), which was promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is codified at 40 C.F.R. Part 300, *et. seq.*

22. Pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), defendants Erving and Baldwinville are liable for the removal costs incurred by the United States at the Birch Hill Dam Site, including interest on these costs pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

REQUEST FOR RELIEF

WHEREFORE, the plaintiff, the United States of America, requests that this Court:

- A. Enter judgment in favor of the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding Defendants jointly and severally liable for all removal costs incurred by the United States, in connection with the Birch Hill Dam Site, plus interest;
- B. Award the United States its costs and disbursements in this action; and
- C. Grant the United States such other relief as the Court deems just and proper.

Respectfully submitted,

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